IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.810 OF 2006

Citizens Co-op. Bank Ltd.,Pune ...Petitioner.

Versus

Vilas V. Khandve & Ors. ...Respondents.

Shri P.S. Dani for the Petitioner.
Shri V.G.Ghosalkar for Respondent No.1.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 21st FEBRUARY, 2006.

P.C. :

1. Heard Shri Dani - learned Counsel appearing for the petitioner and Shri Ghosalkar - learned Counsel appearing for the first respondent. The name of respondent No.2, as far as the present petition is concerned, is deleted at the request of Shri Dani.

2. This Petition under Articles 226 and 227 of the Constitution of India is directed against the order passed by the Maharashtra State Co-operative Appellate Court, dated 16th January, 2006, setting-aside the attachment of the properties belonging to the respondent No.1. The attachment order is issued on 11th November, 2003.

3. It is not disputed before me that an enquiry is commenced and an Authorised Officer is appointed for the purposes of deciding as to whether an order should be made under Section 88 of the Maharashtra Co-operative Societies Act, 1960 read with Rule 72 of the Maharashtra Co-operative Societies Rules, 1961. These proceedings are pending. The Authorised Officer has proceeded to pass an order of attachment in exercise of the powers conferred upon him by Section 95 of the Maharashtra Co-operative Societies Act. The Authorised Officer has by order under challenge before the Appellate Authority, specifically directed that the properties belonging to respondent No.1 be attached and that these properties would not be permitted to be dealt with, nor any encumbrance created with regard to the same.

4. However, that order itself states that the first respondent should, within the period specified therein, produce security or else the attachment would stand confirmed. Against this order of attachment an Appeal was preferred to the Co-operative Appellate Court and the Co-operative Appellate Court in the impugned order held that the attachment is bad because unless and until charges are framed in proceedings under Section

88 of the Maharashtra Co-operative Societies Act, 1960, no attachment could be levied on the properties of the delinquent.

5. Shri Dani has invited my attention to the provisions of Section 88 as also Rule 72 and Section 95 of the Maharashtra Co-operative Societies Act and Rules. He submits that on the plain reading of these provisions, it is clear that the finding of the lower Appellate Court is unsustainable and the very purpose of attaching the properties would be defeated if the said order cannot be passed despite the satisfaction that party to the proceedings which are pending under Section 88 is with intend to defeat, delay or obstruct the execution of the order that is likely to be made is about to dispose of whole or in part of the property or about to remove whole or part of his property from the jurisdiction of the Registrar or the authorised person.

6. Shri Ghosalkar states that the order under challenge does not suffer from any infirmity and should be upheld.

7. In my view, the larger question namely whether the attachment is ex-facie bad on account of charges not being framed against the first respondent, need not

be gone into and decided in the facts and circumstances of the present case. In my view, the attachment order being levied as early as in November, 2003 and proceedings being admittedly pending before the authorised person, interest of justice would be served if the following order is made;

8. ORDER :

i. The authorised person to endeavour and dispose of the proceedings under Section 88 as expeditiously as possible and within a period of six months from today.

ii. It would be open for the first respondent to apply to the authorised person to vacate the order of attachment and such application, if made, should be dealt with after hearing both sides and in accordance with law, within a period of four weeks from the date of its institution. All contentions of both sides in that behalf are expressly kept open.

iii. Needless to state that until the application is decided, the order of attachment passed on 11th November, 2003 will continue.

iv. Further, needless to state that if no such application is made, then the earlier order dated 11th November, 2003 to continue and it would be open for the authorised person to take such steps, as are permissible in pursuance thereto.

(S.C.DHARMADHIKARI,J.)